

SEP 11 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

ISSAC MARTINEZ-MEMIJE,

Petitioner,

v.

MICHAEL B. MUKASEY, Attorney
General,

Respondent.

No. 06-75346

Agency No. A72-309-555

MEMORANDUM^{*}

On Petition for Review of an Order of the
Board of Immigration Appeals

Submitted September 8, 2008^{**}

Before: TASHIMA, SILVERMAN, and N.R. SMITH, Circuit Judges.

Issac Martinez-Memije, a native and citizen of Mexico, petitions pro se for review of the Board of Immigration Appeals' order dismissing his appeal from an immigration judge's deportation order. We have jurisdiction under 8 U.S.C.

^{*} This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

^{**} The panel unanimously finds this case suitable for decision without oral argument. *See* Fed. R. App. P. 34(a)(2).

§ 1252. We review de novo questions of law, *Fernandez-Ruiz v. Gonzales*, 468 F.3d 1159, 1163 (9th Cir. 2006), and deny the petition for review.

We reject Martinez-Memije’s contentions that the agency erred and violated due process in deciding that his 1998 felony conviction under Cal. Health & Safety Code § 11351 is an aggravated felony. *See Rendon v. Mukasey*, 520 F.3d 967, 976 (9th Cir. 2008) (“[P]ossession of a controlled substance with the intent to sell contains a trafficking element and is an aggravated felony.”). Martinez-Memije’s plea agreement establishes that he pled guilty because he “willfully [and] unlawfully possessed tar heroin [in] a sufficient quantity for sale.” *See Parrilla v. Gonzales*, 414 F.3d 1038, 1043 (9th Cir. 2005) (a written plea agreement is a judicially noticeable document under the modified categorical approach described in *Shepard v. United States*, 544 U.S. 13 (2005)).

We also reject Martinez-Memije’s contention that his conviction does not bar him from establishing good moral character for purposes of suspension of deportation and voluntary departure. *See* 8 U.S.C. § 1101(f)(8) (“No person shall be regarded as, or found to be, a person of good moral character who, during the period for which good moral character is required to be established, is . . . one who at any time has been convicted of an aggravated felony[.]”); *Castiglia v. INS*, 108 F.3d 1101, 1103 (9th Cir. 1997) (section 1101(f)(8) “evidences [congressional]

intent that aggravated-felony convictions be an absolute bar to a finding of good moral character”).

In light of our disposition, we need not address Martinez-Memije’s conviction under Cal. Health & Safety Code § 11352(a).

PETITION FOR REVIEW DENIED.